

PROVIDING FOR THE ADJUSTMENT OF CERTAIN TORT CLAIMS
AGAINST THE UNITED STATES AND CONFERRING JURISDICTION
IN RESPECT THERETO ON THE DISTRICT COURTS OF THE
UNITED STATES

MARCH 25 (legislative day, MARCH 5), 1942.—Ordered to be printed

Mr. CHANDLER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2221]

The Committee on the Judiciary, to whom was referred the bill (S. 2221) to provide for the adjustment of certain tort claims against the United States and to confer jurisdiction in respect thereto on the district courts of the United States, and for other purposes, after consideration thereof, report the same favorably to the Senate with amendment, with the recommendation that, as amended, the bill do pass.

The committee amendment is as follows:

Strike out all after the enacting clause and insert the following:

TITLE I.—DEFINITIONS

SEC. 101. As used in this Act, the term—

“Federal agency” includes the executive departments and independent establishments of the United States, and corporations whose primary function is to act as and while acting as instrumentalities or agencies of the United States, whether or not authorized to sue and be sued in their own names: *Provided*, That this shall not be construed to include any contractor with the United States.

“Employee of the Government” includes officers or employees of any Federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a Federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

TITLE II—ADMINISTRATIVE ADJUSTMENT OF TORT CLAIMS AGAINST THE UNITED STATES

SEC. 201. Subject to the limitations of this Act, authority is hereby conferred upon the head of each Federal agency, or his designee for the purpose, acting on behalf of the United States, to consider, ascertain, adjust, determine, and settle any claim against the United States for money only, accruing after the date of approval of this Act, on account of damage to or loss of property or on account of personal injury or death, where the total amount of the claim does not exceed

\$1,000, caused by the negligence of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury or death, in accordance with the law of the place where the negligence occurred. Subject to the provisions of title III of this Act, any such award or determination shall be final and conclusive on all officers of the Government except when procured by means of fraud, notwithstanding any other provision of law to the contrary. Any award made to any claimant pursuant to this section, and any award, compromise, or settlement of any claim cognizable under this Act made by the Attorney General pursuant to section 304, shall be paid by the head of the Federal agency concerned out of appropriations that may be made therefor, which appropriations are hereby authorized. The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of any claim against the United States and against the employee of the Government whose negligence gave rise to the claim, by reason of the same subject matter.

SEC. 202. The head of each Federal agency shall annually make a report to the Congress of all claims presented to such Federal agency under this title. Such report shall include the name of each claimant, a statement of the amount claimed, and the amount awarded or other disposition made in each instance, and a brief description of the claim.

TITLE III.—SUITS ON TORT CLAIMS AGAINST THE UNITED STATES

SEC. 301. Subject to the provisions of this Act, the United States district court for the district wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting as a court of claims without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any claim against the United States, for money only, in any amount not exceeding the sum of \$10,000, accruing after the date of approval of this Act, on account of damage to or loss of property or on account of personal injury or death caused by the negligence of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the negligence occurred. Subject to the provisions of this Act, the United States shall be liable in respect of such claims to the same claimants, in the same manner and to the same extent as a private individual under like circumstances, except that the United States shall not be liable for punitive damages, or interest, or costs. The judgment in such an action shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the Government whose negligence gave rise to the claim. No suit shall be instituted pursuant to this section upon a claim presented to any Federal agency pursuant to title II of this Act unless such Federal agency has made final disposition of the claim: *Provided*, That the claimant may, upon fifteen days' notice given in writing, withdraw the claim from consideration of the Federal agency and commence suit thereon pursuant to this section: *Provided further*, That as to any claim so disposed of or so withdrawn, no suit shall be instituted pursuant to this section for any sum in excess of the amount of the claim presented to the Federal agency, except where the increased amount of the claim is shown to be based upon newly discovered evidence not reasonably discoverable at the time of presentation of the claim to the Federal agency or upon evidence of intervening facts, relating to the amount of the claim. Disposition of any claim made pursuant to title II of this Act shall not be competent evidence of liability or amount of damages in proceedings on such claim pursuant to this section. Judgments against the United States under this title shall be paid in the same manner as judgments rendered under section 24 (20) of the Judicial Code, as amended (28 U. S. C. Sec. 41 (20)): *Provided*, That if the judgment be based on the act or omission of a corporate Federal agency or of an officer or employee thereof, the judgment shall so declare, and the amount thereof shall be charged against funds available to said agency.

SEC. 302. In actions under this title, the forms of process, writs, pleadings, and motions, and the practice and procedure, shall be in accordance with the rules promulgated by the Supreme Court pursuant to the Act of June 19, 1934 (ch. 651, 48 Stat. 1064), and the same provisions for counterclaim and set-off shall be applicable as in cases brought in the United States district courts under the Act of March 3, 1887 (24 Stat. 505).

SEC. 303. Final judgments in the district courts in cases under this title shall be subject to review in the circuit courts of appeals in the same manner and to the same extent as other judgments of the district courts; and Sections 239 and 240 of the Judicial Code as amended, shall apply to such cases in the circuit courts of appeals as to other cases therein.

SEC. 304. With a view to doing substantial justice, the Attorney General is authorized to arbitrate, compromise, or settle any claim cognizable under this title, after the institution of any suit thereon.

SEC. 305. The provisions of this title shall not apply to any claim arising out of the activities of the military or naval forces, or the Coast Guard during time of war.

TITLE IV—PROVISIONS COMMON TO TITLE II AND TITLE III

SEC. 401. Every claim against the United States cognizable under this Act shall be forever barred, unless within one year after such claim accrued it is presented in writing to the Federal agency out of whose activities it arises, if such claim is for a sum not exceeding \$1,000; or unless within one year after such claim accrued an action is begun pursuant to title III of this Act. In the event that a claim for a sum not exceeding \$1,000 is presented to a Federal agency as aforesaid, the time to institute a suit pursuant to title III of this Act shall be extended for a period of six months from the date of mailing of notice to the claimant by such Federal agency by registered mail to the address last given by the claimant as to the final disposition of the claim or from the date of withdrawal of the claim from such Federal agency pursuant to section 301 of this Act, if it would otherwise expire before the end of such period.

SEC. 402. The provisions of this Act shall not apply to—

(1) Any claims based upon—

(a) the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused, or

(b) an act or omission of an employee of the Government, exercising due care, whether or not alleged to be wrongful, in the execution of a program, project, statute, or regulation, valid or invalid.

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(3) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer.

(4) Any claim for which a remedy is provided by the Act of March 9, 1920 (U. S. C., title 46, secs. 741-752, inclusive), or the Act of March 3, 1925 (U. S. C., title 46, secs. 781-790, inclusive), relating to claims or suits in admiralty against the United States.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provision of the Trading with the Enemy Act, as amended.

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(7) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(8) Any claim for which compensation is provided by the Federal Employees' Compensation Act, as amended, or by the World War Veterans' Act of 1924, as amended.

(9) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, or a nuisance not involving negligence.

(10) Any claim for damages caused by the fiscal operations of the Treasury or by the regulations of the monetary system.

(11) Any claim arising in a foreign country.

SEC. 403. If the damage, loss, injury, or death with respect to which a claim is made pursuant to this Act is caused under circumstances creating a legal liability on the part of some person other than an employee of the Government to pay damages therefor, jointly or severally with the United States, the award of judgment against the United States shall be only for the pro rata share of the damages in proportion to the number of parties so jointly or severally liable.

SEC. 404. The court rendering a judgment for the plaintiff pursuant to title III of this Act, or the head of the Federal agency or his designee making an award

pursuant to title II of this Act, or the Attorney General making a disposition pursuant to section 304 of this Act, as the case may be, shall, in each case where the claimant has been represented by attorney, as a part of the judgment, award, or settlement, determine and allow reasonable attorneys' fees to be paid out of but not in addition to the amount of judgment, award, or settlement recovered, to the attorneys representing the claimant. If the recovery is \$500 or more, the attorneys' fees thus determined and allowed shall not exceed 10 per centum of the amount recovered under title II or 20 per centum of the amount recovered under title III. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be subject to a fine of not more than \$2,000, or imprisonment for not more than one year, or both.

SEC. 405. From and after the date of approval of this Act, the authority of any Federal agency to sue and be sued in its own name shall not be construed to authorize suits against such Federal agency on claims which are cognizable under title III of this Act, and the remedies provided by this Act in such cases shall be exclusive.

SEC. 406. (a) All provisions of law authorizing any Federal agencies to consider, ascertain, adjust, or determine claims on account of damage to or loss of property, or on account of personal injury or death, caused by the negligence of any employee of the Government while acting within the scope of his office or employment, are hereby repealed in respect of claims cognizable under title II of this Act and accruing after the date of approval of this Act, including, but without limitation, the provisions granting such authorization now contained in the following laws:

Public Law Numbered 375, Sixty-seventh Congress, approved December 28, 1922 (ch. 17, 42 Stat. 1066; 31 U. S. C., secs. 215-217).

Public Law Numbered 163, Seventy-fifth Congress, approved June 28, 1937 (ch. 383, 50 Stat. 321; 16 U. S. C., sec. 584-0).

Public Law Numbered 267, Sixty-sixth Congress, approved June 5, 1920 (ch. 256, 41 Stat. 1054; 33 U. S. C., sec. 853).

Public Law Numbered 481, Seventy-fourth Congress, approved March 20, 1936 (ch. 159, 49 Stat. 1184; 5 U. S. C., sec. 300 (b)).

Section 4 of the River and Harbor Act, approved June 25, 1910, as amended by the Act of June 5, 1920 (41 Stat. 1015; 33 U. S. C., sec. 564).

Public Law Numbered 338, Sixty-second Congress, approved August 24, 1912 (ch. 391, sec. 1, 37 Stat. 586; 5 U. S. C., sec. 208).

Public Law Numbered 182, Sixty-fifth Congress, approved July 1, 1918 (ch. 114, 40 Stat. 705; 34 U. S. C., sec. 600).

Section 4 of Public Law Numbered 18, Sixty-seventh Congress, approved June 16, 1921 (ch. 231, 42 Stat. 63), as amended by Public Law Numbered 456, Seventy-third Congress, approved June 22, 1934 (ch. 717, 48 Stat. 1207; 5 U. S. C., sec. 392).

(b) Nothing contained herein shall be deemed to repeal any provision of law authorizing any Federal agency to consider, ascertain, adjust, settle, determine, or pay any claim on account of damage to or loss of property or on account of personal injury or death, in cases in which such damage, loss, injury, or death was not caused by any negligence of an employee of the Government while acting within the scope of his office or employment, or any other claim not cognizable under title II of this Act.

SEC. 407. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

EXPLANATION

GENERAL STATEMENT

The bill, as amended, would authorize Federal agencies to adjust and settle, with certain exceptions, tort claims against the United States not in excess of \$1,000, for property loss or damage, personal injury, or death caused by the negligence of any Government officer or employee acting within the scope of his office or employment.

It would also confer exclusive jurisdiction upon the United States district courts over claims of this type, up to a maximum of \$10,000. The bill as amended is an effort to achieve the objectives expressed in the President's message of January 14, 1942 (a) to set up a satisfactory procedure for the administrative and judicial determination of negligence claims in order that the Congress and the President should be relieved of the burden and expense of disposing of such matters by private claim bills and (b) to extend to claimants against the Government for torts of negligence the same right to a day in court which claimants now enjoy in fields such as breach of contract, patent infringement, or admiralty claims. By thus removing a considerable burden from the shoulders of the Claims Committees of both Houses, as well as from the Members of Congress as a whole, added time will be made available for the consideration of matters of grave national importance.

DISCUSSION OF PROVISIONS OF THE BILL AS AMENDED

TITLE I—DEFINITIONS

Title I contains definitions of certain words and phrases, which make it clear that the bill covers all Federal agencies, including corporate instrumentalities, and all Federal officers and employees, including members of the military and naval forces.

TITLE II—ADMINISTRATIVE ADJUSTMENT OF TORT CLAIMS AGAINST THE UNITED STATES

Section 201—Administrative adjustment of claims not exceeding \$1,000.

Title II provides for the administrative adjustment by the head of the Federal agency, or his designee, of claims against the United States not exceeding \$1,000, on account of property loss or damage or personal injury or death caused by the negligence of a Government employee while acting within the scope of his employment. This would broaden the existing authority to make administrative adjustment of tort claims under the act of December 28, 1922 (42 Stat. 1006; 31 U. S. C. sec. 215) by extending it to include claims for personal injury and death, as well as property claims. Any administrative award made by a Federal agency will be final and conclusive upon all Government officers, except where it has been obtained by fraud, and acceptance of the award by claimant will release both the Government and the delinquent employee from any liability to claimant. It is just and desirable that the burden of redressing wrongs of this character be assumed by the Government alone, within limits, leaving the employee at fault to be dealt with under the usual disciplinary controls.

Section 202—Report of claims adjusted.

The head of each Federal agency is required to make an annual report to the Congress of all claims presented to it under the bill.

TITLE III—SUITS ON TORT CLAIMS AGAINST THE UNITED STATES

Section 301—District courts vested with jurisdiction of claims not exceeding \$10,000.

Section 301 vests exclusive jurisdiction in the United States district courts over claims against the Government in an amount not exceeding \$10,000 on account of property loss or damage or personal injury or death caused by the negligence of a Government employee while acting within the scope of his employment. The liability of the United States is to be the same as that of a private individual under like circumstances and is to be determined under the local law, except that no punitive damages and no interests or costs may be assessed against the Government. Local law will govern not only the matter of liability but also the defenses available and the beneficiaries entitled to the recovery. If a claim has been presented to a Federal agency pursuant to title II, suit may not be brought upon it until it has been disposed of by the agency or withdrawn by the claimant; and the claimant may not sue for more than he asked of the Federal agency, in the absence of intervening facts or newly discovered evidence. However, an award offered by a Federal agency but not accepted by the claimant is not admissible in evidence in the suit upon the same claim, either as to liability or amount of damages. This is consistent with the settled principle that offers of settlement or compromise which are not accepted are inadmissible at the lawsuit on the issue of liability or amount of damages.

Judgments, which will bar further action upon the same claim against the negligent employee as well as against the Government, are to be paid in the same manner as judgments rendered upon contract claims under the Tucker Act (Judicial Code, sec. 24 (20); 28 U. S. C., sec. 41 (20)). Where such judgments are based upon the negligence of an employee of a corporate Federal agency they are to be paid in the same manner; that is, by congressional appropriation for payment, but such payments will in turn be charged against the funds available to that agency. Charging such funds for the payment of judgments based upon the negligent torts of their employees will facilitate the complete accounting of the expenditures and income of such agencies.

Section 302—Practice and procedure.

The practice and procedure in the district courts are to be in accordance with the Federal Rules of Civil Procedure, and the same provisions for counterclaim and set-off are to be applicable as in cases brought in the district courts under the Tucker Act.

Section 303—Appeals.

Final judgments of the district courts are subject to review in the circuit courts of appeals in the usual manner, and then may be reviewed in the Supreme Court by certification or certiorari under sections 239 and 240 of the Judicial Code, as amended. This will conform appeals from judgments under this bill to appeals from judgments under the Tucker Act.

Section 304—Compromise of suits.

The Attorney General is given the authority to arbitrate, compromise, or settle claims on which suits had been instituted pursuant to title III.

Section 305—Exemption of claims against the military during time of war.

Claims arising out of the activities of the military or naval forces or the Coast Guard during time of war are exempted from suit pursuant to title III of the bill. Such claims may, however, be administratively adjusted under title II.

TITLE IV—PROVISIONS COMMON TO TITLES II AND III

Title IV contains provisions which are applicable both to administrative adjustments under title II and to actions in the district courts under title III.

Section 401—Statute of limitations.

Section 401 prescribes a statute of limitations of 1 year from the date the claim accrued. If it is submitted to a Federal agency within this period, however, claimant is entitled to an extension of the limitation for 6 months from the date of final disposition of the claim or its withdrawal by claimant.

Section 402—Claims exempted from the bill.

The first subsection of section 402 exempts from the bill claims based upon the performance or nonperformance of discretionary functions, whether or not the discretion involved be abused, and claims based upon the act or omission of a Government employee exercising due care in the execution of a program, project, statute, or regulation, whether or not valid. This is a highly important exception, intended to preclude any possibility that the bill might be construed to authorize suit for damages against the Government growing out of an authorized activity, such as a flood-control or irrigation project, where no negligence on the part of any Government agent is shown, and the only ground for suit is the contention that the same conduct by a private individual would be tortious, or that the statute or regulation authorizing the project was invalid. It is also designed to preclude application of the bill to a claim against a regulatory agency, such as the Federal Trade Commission or the Securities and Exchange Commission, based upon an alleged abuse of discretionary authority by an officer or employee, whether or not negligence is alleged to have been involved. Or to take another example, claims based upon an allegedly negligent exercise of the blacklisting or freezing powers are intended to be excepted by this provision. The bill is not intended to authorize a suit for damages to test or remedy the validity of such discretionary acts even though negligently performed and involving an abuse of discretion. Nor is it desirable or intended that the constitutionality of legislation, or the legality of a rule or regulation be tested through the medium of a damage suit for tort.

The other exemptions from the scope of the bill, listed in section 402, relate to certain governmental activities which should be free of the restraint of damage suits, or in respect of which adequate remedies are already available. These exemptions cover claims arising out of the loss or miscarriage of postal matter; the assessment or collection of taxes or assessments; the detention of goods by customs officers; admiralty and maritime torts; deliberate torts, such as assault and battery; and some others.

Section 403—Proportionate liability in cases of joint tort-feasors.

Section 403 provides for proportionate liability of the United States, based upon the number of parties liable, where the damage or injury has been caused jointly by a Federal employee and another person or persons.

Section 404—Attorneys' fees.

Section 404 of the bill requires the court or the administrative officer, as the case may be, to fix reasonable attorneys' fees in connection with the judgment or award recovered by claimants who are represented by attorney. Such fees, if the recovery is \$500 or more, may not exceed 10 percent of the administrative award or 20 percent of the judgment. In any case, however, the attorneys' fees allowed must be paid out of, but not in addition to, the judgment or award. Criminal penalties are provided for charging or collecting legal fees in excess of the maximum.

Section 405—Termination of separate liability of Federal corporate agencies.

Section 405 is intended to exclude any liability of Federal corporations and other corporate instrumentalities of the Government now subject to suit in their own name, in respect of tort claims. If the United States is to assume liability for the tortious conduct of its agents, there is no sound reason for distinguishing between employees of an executive department or independent establishment and those of a governmental corporation. Section 405 is intended to place torts of "suable" agencies of the United States upon precisely the same footing as torts of "nonsuable" agencies. In both cases, the suits would be against the United States; in both cases, the limitations and safeguards of the bill would apply; in both cases, the exceptions of the bill would apply either by way of preventing recovery at all or by way of leaving recovery to some other act, as, for example, the Suits in Admiralty Act. Section 405 intends that neither corporate status nor "sue and be sued" clauses shall, alone, be the basis for suits for money recovery sounding in tort.

Section 406—Repeal of certain statutes.

Section 406 would repeal a number of existing statutes which now authorize the administrative adjustment of tort claims but only in respect of claims which may be settled under the bill. Thus claims which occur prior to the effective date of the bill; claims which may, irrespective of negligence, be adjusted under existing law, and claims not cognizable under the bill for any other reason, may be considered and determined by the Federal agencies under existing law as at present. However, claims based upon the negligence of a Federal employee acting within the scope of his authority and cognizable under title II of the bill are to be presented for administrative adjustment solely under this bill.

Section 407—Separability.

Section 407 contains the usual separability clause.